

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Competitive Product Prices  
Priority Mail Express  
Priority Mail Contract 16

Docket No. MC2014-12

Competitive Product Prices  
Priority Mail Express Contract 16 (MC2014-12)  
Negotiated Service Agreement

Docket No. CP2014-16

PUBLIC REPRESENTATIVE COMMENTS ON THE REQUEST OF THE UNITED  
STATES POSTAL SERVICE TO ADD PRIORITY MAIL EXPRESS CONTRACT 16 TO  
COMPETITIVE PRODUCT LIST

(December 23, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1919.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express Contract 16 to the competitive product list.<sup>2</sup> The Postal Service's Request includes: a copy of Governor's Decision No. 11-6; a redacted copy of the contract; Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and an Application for Nonpublic Treatment of the materials filed under seal. The Postal Service did not propose new Mail Classification Schedule language.

According to the Postal Service, Priority Mail Contract 16 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1 through 2.

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<sup>1</sup> PRC Order No. 1919, Notice and Order Concerning the Addition of Priority Mail Contract 16 to the Competitive Product List, December 20, 2013.

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Express Contract 16 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 19, 2013 (Request).

The Postal Service asserts that the contract will cover its attributable costs and provide a positive contribution to institutional costs as required by Governors' Decision No. 11-6<sup>3</sup> and the compliance of the instant contract with 39 U.S.C. § 3633(a). Request at 2.

The instant contract's effective date is one day following the date on which the Commission issues all necessary regulatory approvals. *Id.*, Attachment B at 3. The contract is scheduled to expire three years from the effective date unless either party terminates the contract with 30 days' prior written notification. *Id.*

## COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service's Request. Based upon that review, the Public Representative concludes that Priority Mail Express Contract 16 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues in the first year to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633.

*Product List Assignment.* Pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 the Postal Service requests that Priority Mail Express Contract 16 be added to the competitive product list. 39 U.S.C. § 3642(b)(1) requires the Commission to consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

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<sup>3</sup> Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors' Decision No. 11-6).

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request, Attachment D. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service's Request to add Priority Mail Express Contract 16 to the competitive product list is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service's competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Request, it appears the negotiated prices in the instant contract should generate sufficient revenues to cover costs during its first year.

As noted above, however, the instant contract is expected to remain in effect for a period of three years. The Postal Service provides no data to demonstrate that the instant contract will comply with the requirements of 39 U.S.C. § 3633(a) during years two and three of the contract. However, the fact that the term of the instant contract provides a formula for annual adjustments in the negotiated rates may permit revenues to cover costs during the second and third year. Consequently, the Public Representative recommends that the Commission approve the instant contract that satisfies the requirements of section 3633(a) during the first year. The Commission has an opportunity to review the financial results of the instant contract for compliance with 39 U.S.C. § 3633(a) each year of the contract in the Annual Compliance Determination.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

A handwritten signature in black ink, reading "Pamela A. Thompson". The signature is written in a cursive style with a horizontal line underneath the name.

Pamela A. Thompson  
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